

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS ON THE PRACTICE OF BUYING AND SELLING PIRATED PLAYSTATION X GAME PACKAGES CASE STUDY OF CAKRANEGARA GAME SHOP IN MATARAM CITY

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Abstract

This study aims to describe and analyze the practice of buying and selling pirated playstation game packages in Cakranegara District, Mataram City and to analyze the perspective of sharia economic law on the practice of buying and selling pirated playstation game packages in Cakranegara District, Mataram City.

This study uses a type of qualitative research, namely research based on social phenomena and then produces descriptive data. The types of data used are primary and secondary data. The data collection techniques used are interviews, documentation, and observation. The data analysis method used is data reduction, data presentation, and conclusion drawing.

The practice of buying and selling playstation game packages can be detailed as follows: sellers download game packages on illegal sites, sellers promote directly or through social media, buyers come to submit requests, game selection, filling process, then the transaction and after-sales stages. Motivation from the seller's side, namely: profit, there are still enthusiasts, and provide emotional benefits. The motivation from the buyer's side is because of the low price, easy process, and varied choices. The results show that the practice does not fulfill the principle of legal ownership and is not in accordance with the causes of ownership in Islam. According to the law of sale and purchase, this practice is categorized as fasid sale and purchase, because one of the conditions for sale and purchase, namely the condition of the object of ownership, is not fulfilled and violates the principles of Islamic economic law.

Keywords: *Sale and Purchase, Games, property rights, Copyright, IPR.*

1. INTRODUCTION

Copyright or *copyrights* are privileges owned by the copyright holder, which allows them to reproduce the work or give permission related to the copyright, while still complying with the signs set out in the legal regulations that still apply.¹ Copyright is included in the category of intangible property. This is regulated in Article 3 paragraph (1) of Law Number 28 Year 2014, where it is stated that copyright is a movable object.

Copyright in the context of Islamic law is a relatively new topic and is still developing in contemporary Islamic legal literature. Referring to MUI Fatwa Number: 1/MUNAS VII/MUI/5/2005 regarding the regulation of Intellectual Property Rights (IPR), the first section discusses regarding general provisions explaining that intellectual property rights refer to the right to enjoy the results of intellectual creativity economically. Thus,

¹ Nanda & Hardi, *Intellectual Property Rights An Introduction*, (Bandung: Widina Bhakti Persada Bandung, 2022), pp. 23.

individuals are given the privilege to register and obtain certainty over the intellectual works they create.

The regulation of intellectual property, especially regarding copyright, is contained in MUI Fatwa No. 1 Year 2003. In the fatwa, copyright is seen as a wealth that deserves legal protection, similar to other forms of wealth. In addition, copyright can be used as an object of contract, both in the context of commercial contracts and non-commercial contracts. Copyright also has the potential as an object of waqf and inheritance. Therefore, all forms of violation in the field of copyright, especially piracy, is considered an injustice.

The scope of copyright as stipulated in Act No. 28 Year 2014 article 40 paragraph (1) states the scope of copyright is: books, pamphlets, embellishments of published works, all other forms of written works; lectures, lectures, speeches, and similar creations; teaching aids intended for education and science; songs and / or music with or without text; drama, musical drama, dance, choreography, puppetry, and pantomime; works of fine art in all forms such as paintings, drawings, engravings, calligraphy, sculpture, sculpture, or collage; works of applied art; architecture; maps; batik art or other motif art; photographic works; portraits; cinematographic works; translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and similar works from the results of transformations; translations, adaptations, arrangements, transformations, or modifications of traditional cultural expressions, compilations of works, both in forms that can be read with computer applications or other media; collections of traditional cultural expressions as long as the compilation is an original work; *games*, and computer programs.

Preliminary studies conducted by researchers found that there are practices of buying and selling pirated *game* packages carried out in Mataram City, especially in Cakranegara District. A pirated *game* package is a collection of computer programs in the form of *games* that are made into a separate package. The price of this pirated game package is much cheaper than the original *game*. As a comparison, the author found that one store called cakra games sold a package containing 10 *PlayStation 4 games* priced at IDR 200,000.² While on the official *Playstation* website for one *playstation 4 game* ranges from Rp250,000.00-Rp1,000,000.00.

The practice of buying and selling pirated *Playstation game* packs is driven by the popularity of certain *games* that sell well in the market. *Grand Theft Auto V (GTA V)*, for example, is in high demand because it offers a vast open-world experience and unlimited freedom of exploration. *FIFA Series* is popular with sports lovers, especially soccer because of its realistic *gameplay* and *multiplayer* features. *The last of us* appeals to players because it has a deep emotional story and unique *gameplay*. *God of war* is a favorite for its combination of dynamic combat, strong narrative, and quality visuals, while *spider-man* appeals to players for its open-world superhero experience. This popularity makes these *games* prime targets in the practice of buying and selling *game* packages.³

² Meteor *Game Shop* employee, *Interview*, Mataram, January 3, 2024

³ NL, owner of Cakra Games, *Interview*, Mataram, December 26, 2024.

Researchers observed that most sellers of pirated *game* packages are adults who are quite tech-savvy, they are legitimate stores but openly sell the *game* package products. Some of the shops that have been identified in Cakranegara District, Mataram City by researchers are as follows: cakra games, MGS, and rio games.

2. RESEARCH METHOD

The type of research that researchers use is qualitative research. Qualitative research is a research approach that aims to understand the phenomena experienced by research subjects, such as behavior, perceptions, motivations, actions, and so on, as a whole. This understanding is done through descriptions in the form of words and natural language in a specific and real context, and by utilizing various scientific methods.⁴

The author in this case conducts field research where the data from this research is obtained directly from the field. However, the author still uses library sources as reference material to investigate the issue of buying and selling in the Islamic context. The approach in this research uses a juridical-sociological approach which aims to examine in more depth the legal provisions that are in force which are then formed with the social reality that occurs in society.⁵

3. DISCUSSION

Intellectual Property Rights (IPR) are part of property rights whose existence is legally recognized in the legislation system and also receive attention in the review of Islamic law. In the perspective of sharia, all forms of work born from the results of a person's thoughts, creativity, and expertise can be categorized as property (*māl*) as long as they have benefits and can be legally owned. Therefore, digital products such as software and *games* also fall into this category if they fulfill the elements of legal ownership and do not contradict sharia principles.⁶

Creating an app, software, or digital game requires inventiveness, skill, creativity, as well as time and money. Therefore, the ownership rights to such digital works should be respected like any other property. Islam encourages its followers to respect the work of others and prohibits any form of appropriation, theft, or unauthorized use, including in this case digital piracy. The practice of game piracy, where game products are copied, traded, or used without official permission from the copyright owner, is a form of violation of other people's property rights that is prohibited by Sharia.

The sale and purchase of pirated game packages found in Cakranegara Sub-district, Mataram City, is one form of economic practice that has developed in the community, especially among teenagers and small business owners. However, this practice contains elements of violation of intellectual property rights, because the products traded are not legal goods

⁴ Abdul Fattah Nasution, *Qualitative Research Methodology*, (Bandung: Harfa Creative, 2023), pp. 34.

⁵ Bahder Johan Nasution, *Research Methods in Legal Science*, (Bandung: Mandar Maju, 2008), p. 130. 130.

⁶ Sutisna, "Islamic Law's View of Copyright", *Journal of Islamic Law*, Vol.5, Number 1, 2021, p.6

and are not accompanied by official permission from the copyright owner. Therefore, the practice needs to be reviewed in depth through the perspective of sharia economic law, so that it can be assessed whether the transaction is valid according to Islam or is included in prohibited actions. In this regard, researchers will describe the findings of the data that have been presented in the previous chapter and analyze them using the approach of sharia economic law.

The practice of buying and selling *game* packages in Cakranegara District, Mataram City consists of several stages of the mechanism identified in the previous chapter, the seller downloads the pirated game package, the promotion stage is then followed by the buyer bringing a console or storage media, selecting *games*, charging *games*, payment, and warranty services from the shop. The analysis of each of these stages will be reviewed using the perspective of sharia economic law which emphasizes the values of Islamic law.

The initial process before the sale and purchase occurs is the downloading of *game* packages from the internet by the seller. In practice, the seller does not make or pirate the *game* himself, but downloads from sites that provide pirated files for free such as romsfun, romspure, and insidegame sites. The game files that have been downloaded by the seller are then stored on the store's computer. Then the game files that have been collected will later be offered to buyers who come.

The practice of buying and selling pirated *game* packages carried out by *game* shops in Cakranegara District based on the data that researchers have collected begins with promotion, this stage is a part that functions to attract buyers. Promotion is carried out through various means, such as social media (*Facebook* and *WhatsApp*). This strategy is considered effective in expanding the market and maintaining relationships with regular consumers. However, when viewed from the perspective of Sharia Economic Law, promotion or advertising (*i'lan*) in a sale and purchase must fulfill the principle of honesty (*ṣidq*) and not contain elements of deception (*gharar*), lies, or promotion of something prohibited (*maksiat*).⁷ In this context, pirated *games* are products that do not have official permission from the copyright owner and fall under the category of violation of other people's property rights (*haq al-milkiyah*).

The consumer stage comes to the store with a *game* console such as a *PlayStation* or data storage device such as a *flash drive* or *external hard disk*. In Islamic economic law, this initial process is included in the preparation of the contract, namely that there has not been an exchange between the seller and the buyer but has shown an intention to make a transaction. The buyer is in a position of choice, and there is no coercion or manipulation from the seller, so there is an attitude of pleasure and voluntariness from both parties. The seller also accepts consumer goods for technical inspection, for example by checking the storage space of the device. This shows good faith to create clarity in the transaction to be carried out.

The results of the researcher's data findings after the process of bringing the console and storage media, consumers then choose the type of

⁷ Prilia Kurnianingsih, *Fiqh Muamalah*, (Depok: PT Rajagrafindo Persada, 2021), p. 15. 15.

game they want to install. The seller usually shows a list of *games* both in the form of digital and non-digital catalogs available, explains the file size, and compatibility with the buyer's device. Based on the data that researchers have collected in the previous chapter, it shows that the price of this pirated game package is very far from the price of the original game. As a comparison, researchers found that one store called Cakra Games sold a package containing 10 PlayStation 4 games priced at IDR 200,000. Meanwhile, on the official PlayStation website for one PlayStation 4 game ranges from Rp250,000.00-Rp1,000,000.00.

This game selection stage in terms of sharia economic law is very important because it is directly related to the object of sale and purchase. The selected *game* must be clear and not contain elements of *gharar* (uncertainty), both in terms of name, content, quantity, and format. The seller has the responsibility to explain the status and nature of the product honestly to avoid fraud. However, based on the researcher's findings, not all sellers directly explain the legal status of *the game* whether pirated or original, which in sharia economic law includes deficiencies in the aspect of information transparency.⁸

After selecting the *game*, the seller starts the process of installing or transferring the *game* to the buyer's device, but the status of the installed goods (i.e. pirated games) becomes a problem. In Islamic law, intellectual property rights are recognized as property rights, and selling products without the permission of the legal owner can be classified as a violation of other people's property rights, which is legally included in haram acts. Therefore, although the process is carried out with the legal pillars and conditions of sale and purchase, the goods or objects sold need to receive attention regarding their status whether they are haram or not.

The payment and warranty stage is the stage that is carried out after the filling process is complete, the buyer makes payment according to the agreed price that has been determined. In sharia, cash transactions like this are valid as long as they do not contain elements of usury, *gharar*, and there is no element of fraud in the price or product. In the practice of buying and selling *game* packages generally applies a cash or transfer payment system, both of which are allowed in Islam. Then services such as warranty replenishment if the *file is corrupt*, or replacement if the *game* cannot be run, show good faith in doing business. This is in line with Islamic ethics which emphasize not only profit, but also the value of service and responsibility from the seller.

The law of buying and selling is permissible. However, in certain situations, this law may change according to the conditions. Buying and selling can become obligatory if a person is in an emergency and needs something to save himself, such as food or drink. Conversely, refusing to sell something that can save another person's life can become haram.

The *ijab qabul* process in the sale and purchase of *game* packages in Cakranegra Subdistrict, Mataram City is carried out verbally, namely the buyer conveys the number of *games* he wants to buy and then the seller agrees to the request. Although in practice it does not use Arabic language editorials, customarily the *sighat* or *ijab qabul* is considered valid because

⁸ *Ibid*, p. 40.

it shows the agreement of the two parties to the transaction. In addition, there is also an exchange rate for the price of the goods being traded. The exchange rate in the context of buying and selling *game* packages in Cakranegara District has fulfilled the pillars.

The goods used as the object of the transaction, namely the *game* package being traded, are pirated products that are obtained by downloading them on sites that provide pirated *games*. In Sharia, the goods traded must be halal, legally owned by the seller, and do not contain elements of injustice. Pirated *games* do not meet these criteria, because the *game* is a copyrighted work whose usage rights are protected by law, both positively and sharia. Therefore, the seller does not have the shar'i right to sell them, even though they can be copied and installed easily. Selling something that is not legally owned is a violation of the Islamic principle of ownership.

Copyright is a special right owned by the creator and arises automatically based on the declarative principle, namely after a work is realized in real form. This right applies even though it remains subject to the limitations set out in the legislation. The term special right refers to a right that is only owned by the creator, so that other parties are not allowed to use, duplicate, or utilize the creation without the permission of the right owner. Thus, copyright gives full authority to the creator to control and control the use of his work. Every individual who creates a work has exclusive rights over his or her creation.⁹

Fatwa of the Indonesian Ulema Council (MUI), also explains that pirating and trading software or digital products without permission is an act that is not justified by sharia because it contains elements of ghasab (unauthorized taking of other people's rights). This is based on the Decree of the Indonesian Ulema Council Fatwa Number: 1/MUNAS VII/MUI/5/2005 concerning the Protection of Intellectual Property Rights, precisely in paragraph 4, which explains that all forms of violation of Intellectual Property Rights including using, disclosing, making, using, selling, importing, exporting, distributing, submitting, providing, reproducing, plagiarizing, falsifying, pirating other people's property rights without the permission of the right holder, then this is an injustice and the law is haram.¹⁰

The practice of buying and selling pirated *Playstation game* packages that occurs in Cakranegara District is not in line with the principles of ownership in Islam. Islamic law divides ownership into two forms, namely al-milkiyyah at-tammah (perfect property) and al-milkiyyah al-naqisah (imperfect property). Perfect ownership includes the right to fully utilize and manage an item, as long as it does not violate shar'i provisions. Meanwhile, imperfect ownership has restrictions on management or utilization, such as waqf goods, leases, or trusts. In the case of pirated game packages, the seller does not have legal ownership rights to the product because they did not obtain permission from the original owner (developer or official publisher). Therefore, the practice does not qualify as legal ownership in either form.

⁹ Fitra Rizal, "Critical Reasoning of Copyright Infringement in Islam", *Al-Manhaj: Journal of Islamic Law and Social Institutions*, Vol. 2, No. 1, January 2020, p.4.

¹⁰ MUI Fatwa Number: 1/MUNAS VII/MUI/5/2005 on the Protection of Intellectual Property

If this practice is viewed from the causes of ownership in Islam, then this sale and purchase practice also does not meet the criteria that are justified by Shari'ah. There are three main causes of ownership in Islam: *Al-Istihlāk al-Mubāhāt* (taking something permissible from nature directly such as water, land, or fish in the sea), which in this case is irrelevant because the game product is not a permissible object that has not been owned. *Al-'Uqūd* (valid contracts), such as buying and selling, renting, granting, and so on. In the case of piracy, the contract is invalid because it involves goods that do not legally belong to the seller and there is no willingness from the legal owner. *Al-Khilāfah* (transfer of ownership by inheritance, will, or grant). In pirated practices, there is no legal form of transfer of ownership from the original owner to the seller.¹¹

The practice of buying and selling pirated game packages in Cakranegara Subdistrict is included in the category of *fasid* buying and selling, because the transaction is carried out by someone against goods that do not belong to him or without the permission of the legal owner. In Islamic law, this kind of sale and purchase is considered *fasid* unless after obtaining permission from the original owner. Without the willingness of the party who has full rights to the game product, the transaction is declared to have no legal force and is a violation of the principle of justice in muamalah.

The purchase and use of pirated PlayStation games is a form of copyright infringement that is still rampant, especially in developing countries such as Indonesia. While this practice may seem trivial to consumers, it has significant legal and economic implications. Copyright is an exclusive right granted to creators or rights holders of intellectual works, including software and digital games. In the context of Indonesian law, copyright protection is regulated in Law Number 28 of 2014 concerning Copyright. Any duplication, distribution, or use of copyrighted works without the permission of the rights holder including downloading, trading, or playing pirated games is an unlawful act. Purchasing pirated PlayStation games is often done on the grounds that the original games are expensive. However, this directly harms authorized developers, publishers, and distributors. On the other hand, the sellers are also threatened with criminal sanctions in the form of imprisonment of up to 10 years and/or a fine of up to Rp4 billion, as stated in Article 113 of the Copyright Law. These violations not only harm the gaming industry globally, but also weaken the domestic digital ecosystem. Consumers who are accustomed to using pirated products become unfamiliar with the culture of respecting copyrighted works, and this hampers the growth of local creative industries.

In addition, pirated games often contain security risks such as malware, viruses, and system crashes, and omit important features that are only available in the original version, such as updates, online access, and service guarantees.

In the long run, it is important for society to build legal awareness and digital ethics. The government, industry players, and consumers need to play an active role in reducing the circulation of pirated products through

¹¹ Dimyauddin Djuwaini, *Introduction to Fiqh Muamalah*, (Yogyakarta: Pustaka Pelajar, 2008), p. 34. 34.

education, strengthening regulations, and providing more affordable access to legal products.

4. CONCLUSION

The conclusions from the results of this study based on the presentation of data and the results of this study can be drawn as follows:

1. The practice of buying and selling *playstation game* packages in Cakranegara District is carried out through several stages, namely: customers come to the store with a console or storage media in the form of a hard disk, customers choose the type of *game* according to their preferences, the process of filling the *game* by the store, payment according to the agreement, and after-sales service in the form of repairing damaged games or replacing *games*. This mechanism technically looks like a normal sale and purchase, but the object being traded does not have official permission from the copyright holder. The main contributing factors for sellers to carry out this practice are the high demand from consumers, the financial benefits, and the desire to provide *gamers* with a positive emotional experience. Meanwhile, from the consumer side, the factors for buying this *game* package are because the price is cheaper, the choice of *games* is greater, and the availability is easily accessible.
2. Legal perspective The purchase of pirated PlayStation games is often done on the grounds that the original games are expensive. However, this directly harms the official developers, publishers, and distributors. On the other hand, the sellers are also threatened with criminal sanctions in the form of imprisonment of up to 10 years and/or a fine of up to Rp4 billion, as stated in Article 113 of the Copyright Law. These violations not only harm the gaming industry globally, but also weaken the domestic digital ecosystem. Consumers who are accustomed to using pirated products become unfamiliar with the culture of respecting copyrighted works, and this hinders the growth of the local creative industry.

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